

BEFORE THE
POLLUTION CONTROL HEARINGS BOARD
STATE OF WASHINGTON

IN THE MATTER OF)
JAMES R. BACH,)
)
Appellant,)
)
v.)
)
STATE OF WASHINGTON,)
DEPARTMENT OF ECOLOGY,)
)
Respondent.)

PCHB No. 636

FINAL FINDINGS OF FACT,
CONCLUSIONS OF LAW
AND ORDER

THIS MATTER being the review of a license-suspension order issued pursuant to chapter 18.104 RCW (Water Well Construction Act of 1971); having come on regularly for hearing before the Pollution Control Hearings Board on the 8th day of November, 1974, at Seattle, Washington; and appellant, James R. Bach, appearing through his attorney, Sam B. Franklin and respondent through Wick Dufford, Assistant Attorney General; and Board members present at the hearing being Walt Woodward (presiding) and Chris Smith and the Board having considered the sworn testimony, exhibits, records and files herein and arguments of counsel and having

1 entered on the 2nd day of December, 1974, its proposed Findings of Fact,
2 Conclusions of Law and Order, and the Board having served said proposed
3 Findings, Conclusions and Order upon all parties herein by certified
4 mail, return receipt requested and twenty days having elapsed from said
5 service; and

6 The Board having received no exceptions to said proposed Findings,
7 Conclusions and Order; and the Board being fully advised in the premises;
8 now therefore,

9 IT IS HEREBY ORDERED, ADJUDGED AND DECREED that said proposed Findings
10 of Fact, Conclusions of Law and Order, dated the 2nd day of December,
11 1974, and incorporated by this reference herein and attached hereto as
12 Exhibit A, are adopted and hereby entered as the Board's Final Findings of
13 Fact, Conclusions of Law and Order herein.

14 DONE at Lacey, Washington, this 7th day of January, 1975.

15 POLLUTION CONTROL HEARINGS BOARD

16
17 Walt Woodward
18 WALT WOODWARD, Chairman

19
20 Chris Smith
21 CHRIS SMITH, Member

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25
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27 FINAL FINDINGS OF FACT,
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FINDINGS OF FACT,
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This matter, the review of a license-suspension order issued pursuant to chapter 18.104 RCW (Water Well Construction Act of 1971), came as a formal hearing before the Pollution Control Hearings Board (Walt Woodward, presiding officer, and Chris Smith) in the Seattle facility of the Board of Industrial Insurance Appeals on November 8, 1974.

Appellant appeared through Sam B. Franklin; respondent through Wick Dufford, assistant attorney general. Eugene E. Barker, Olympia court reporter, recorded the proceedings.

Witnesses were sworn and testified. Exhibits were admitted.

EXHIBIT A

1 Counsel made closing arguments.

2 From testimony heard, exhibits examined and arguments considered,
3 the Pollution Control Hearings Board makes these

4 FINDINGS OF FACT

5 I.

6 Appellant, a water well construction operator licensed under
7 chapter 18.104.070 RCW with 12 years' experience, began drilling a well
8 for William Raser in the southwest quarter of the southeast quarter of
9 the southwest quarter of Section 33, Township 26 North, Range 2 E.W.M.,
10 in July, 1973.

11 For the first 18 feet, a 10-inch hole was prepared through clay and
12 sealed to the surface with puddling clay (WAC 173-060-030(26)) around a
13 six-inch well casing. At a depth of 130 feet an aquifer was reached. .
14 pump and screen were installed. The completed well produced water at
15 the rate of three gallons a minute.

16 This quantity of water was not satisfactory to Raser. He directed
17 appellant to drill deeper. At 150 feet, another aquifer was reached
18 which produced water at the rate of 25 gallons a minute. Raser accepted
19 the completed well and paid appellant.

20 Subsequently, the water proved to be contaminated with methane gas.
21 Raser instructed appellant to pull the six-inch casing back to the
22 130-foot level. Appellant did this but only after encountering difficulty
23 which necessitated pounding and "working" the casing from side-to-side
24 in order to extract it from the clay. In this process, the puddling
25 clay seal slipped six feet or more below the surface.

26 In Raser's absence, appellant rigged a temporary electrical

27 FINDINGS OF FACT,
CONCLUSIONS OF LAW AND ORDER 2

connection and, as was his practice, engaged the pump to run for a 24-hour test period. The pumping well was not connected to Raser's house. Appellant left the premises during this test period. In his absence, Raser returned, was displeased with the quantity of water and, in a telephone conversation with appellant, refused permission to appellant, under threat of bodily harm, to return to Raser's property to complete the well.

II.

Appellant, not regarding his work as completed, did not file with respondent a report within 30 days of the 24-hour test at the 130-foot level. Subsequently, on advice of his attorney, appellant filed the report. The report, reflecting the work which appellant did in the first "completed" well at the 130-foot level, stated that a puddling clay seal had been established from the surface to a depth of 18 feet.

III.

Respondent, after a complaint by Raser, who then was engaged in litigation with appellant over the well, visited Raser's property. Using a six-foot probe, respondent's inspector determined there was no puddling clay seal.

On June 25, 1974, respondent issued to appellant its Order No. DE 74-92, citing a violation of WAC 173-160-130 and suspending appellant's well construction license for ten days. That order is the subject of this review.

IV.

Any Conclusion of Law hereinafter stated which is deemed to be a Finding of Fact is adopted herewith as same.

FINDINGS OF FACT,
CONCLUSIONS OF LAW AND ORDER

1 From these Findings, the Pollution Control Hearings Board comes
2 to these

3 CONCLUSIONS OF LAW

4 I.

5 This is almost entirely a matter of fact, not law. The pertinent
6 law, the Water Well Construction Act of 1971, is a good one and both
7 appellant and respondent appear to have been trying to abide by its
8 public-health provision which sensibly calls for a surface seal to
9 prevent the seepage of surface contaminants down alongside a well casing.

10 II.

11 The facts of the matter are governing here. Respondent, in good
12 faith, determined that there was no seal for a distance of six feet
13 from the surface. Respondent had sufficient cause to issue its Order
14 No. DE 74-92.

15 III.

16 But appellant originally had installed a surface seal to the
17 required depth of 18 feet. In Raser's displeasure with the quantity of
18 water, appellant had dislodged his once-completed seal in "working" the
19 casing back to the 130-foot level. Appellant, after performing this
20 maneuver, did not regard the well as "completed" and was in the process
21 of testing it when he was forbidden by Raser to return to the scene to
22 complete the well.

23 If appellant erred, it was in not promptly and fully reporting the
24 situation to respondent under WAC 173-160-050. In this connection, it
25 is noted that WAC 173-160-050 requires a report to respondent within
26 30 days after "completion" of a well. Appellant did not regard the we. ,

27 FINDINGS OF FACT,
CONCLUSIONS OF LAW AND ORDER

1 when pulled back to the 130-foot level, as "completed." He subsequently
2 filed a report, but only on advice of counsel in preparation for
3 litigation then pending in Superior Court. That report, which reflected
4 the truth as to the seal in appellant's mind, was not so regarded by
5 respondent.

6 IV.

7 Any Finding of Fact stated herein which is deemed to be a
8 Conclusion of Law is adopted herewith as same.

9 Therefore, the Pollution Control Hearings Board issues this

10 ORDER

11 Respondent's Order DE 74-92 is reversed.

12 DONE at Lacey, Washington this 2nd day of ~~November~~ December, 1974.

13 POLLUTION CONTROL HEARINGS BOARD

14 Walt Woodward
15 WALT WOODWARD, Chairman

16 Chris Smith
17 CHRIS SMITH, Member